

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	RUFUS P. TERRELL,)	Case No. CV 11-3392 RNB
12	Plaintiff,)	
13	vs.)	ORDER AFFIRMING DECISION OF
14	MICHAEL J. ASTRUE,)	COMMISSIONER
15	Commissioner of Social Security,)	
16	Defendant.)	
17)	

18

19 The sole disputed issue listed in the Joint Stipulation is whether the

20 determination by the Administrative Law Judge (“ALJ”) that plaintiff’s only

21 limitation was to unskilled work involved a misinterpretation of the opinion of the

22 consultative examining psychiatrist, Dr. Goldsmith. (See Joint Stipulation [“Jt Stip”]

23 at 3, 7, 10-11.) The Court now rules as follows with respect to that issue.¹

24

25 ¹ As the Court advised the parties in its Case Management Order, the

26 decision in this case is being made on the basis of the pleadings, the administrative

27 record (“AR”), and the Joint Stipulation filed by the parties. In accordance with Rule

28 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party

is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

1 In his examination, Dr. Goldsmith opined that plaintiff had “moderate”
2 limitations in the following areas: the ability to carry out detailed and complex
3 instructions; the ability to interact with supervisors, co-workers, and the public; the
4 ability to associate with day-to-day work activity, including attendance and safety;
5 and the ability to adapt to the stresses common to a normal work environment. (See
6 AR 219.) The ALJ referred to a form, HA 1152-U3, to define “moderate” as “more
7 than a slight limitation in this area but is still able to function satisfactorily.” (See AR
8 14.) Accordingly, the ALJ determined that plaintiff’s limitations did not preclude
9 him from performing a full range of unskilled work and therefore, he was not disabled
10 pursuant to section 204.00 of the Medical-Vocational Guidelines (“Grids”). (See AR
11 17-18.)

12 Plaintiff claims that the ALJ’s use of form HA 1152-U3 was improper because
13 the record does not contain any such form or any other evidence of how Dr.
14 Goldsmith was defining the term “moderate.” (See Jt Stip at 6.) Accordingly,
15 plaintiff argues that the ALJ should have recontacted Dr. Goldsmith for clarification
16 before concluding that plaintiff was not disabled. (See Jt Stip at 8.) The Court rejects
17 plaintiff’s argument. The Commissioner has attached a copy of form HA 1152-U3,
18 which indicates, consistent with the ALJ’s interpretation, that “moderate” means that
19 “there is more than a slight limitation in this area but the individual is still able to
20 function satisfactorily.” (See Jt Stip Exh. 1 at 1.) It is reasonable to conclude that Dr.
21 Goldsmith’s understanding of the term “moderate” was consistent with the definition
22 provided on form HA 1152-U3, in light of the fact that the Commissioner regularly
23 provides this form to consultative examining physicians. See HALLEX I-2-5-20
24 (listing form HA-1152 as among the documentation provided to consultative
25 examining physicians). In any event, plaintiff has not proffered, nor is the Court
26 aware of, any alternative definition of “moderate” that Dr. Goldsmith might have
27 intended and that would have changed the ALJ’s determination that plaintiff could
28 function satisfactorily and therefore was not disabled. See Lacroix v. Barnhart, 465

1 F.3d 881, 888 (8th Cir. 2006) (affirming ALJ's determination that claimant's
 2 moderate mental limitations would not prevent her from functioning satisfactorily in
 3 that area); see also Beene v. McMahon, 226 Fed. Appx. 348, 350 (5th Cir. 2007)
 4 (holding that "the critical issue on appeal is **not** the precise definition of 'moderate'
 5 but whether the ALJ was properly able to assess" plaintiff's ability to work)
 6 (emphasis in original); Houck v. Astrue, 2011 WL 2690391, at *3 (M.D. Fla. July 11,
 7 2011) (holding that ALJ's partial misstatement in defining "moderate" was
 8 immaterial because the fact "that the plaintiff can function satisfactorily is the
 9 ultimate criterion in determining whether he is disabled"). Accordingly, plaintiff has
 10 failed to convince the Court that recontacting Dr. Goldsmith would have served any
 11 useful purpose.

12 In addition, plaintiff claims that the ALJ misrepresented his Global Assessment
 13 of Functioning ("GAF") score of 50 as "very close to finding of moderate symptoms."
 14 (See Jt Stip at 7.) A GAF score of 41-50 indicates "serious symptoms (e.g., suicidal
 15 ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment
 16 in social, occupational, or school functioning (e.g., no friends, unable to keep a job)."
 17 However, a GAF score of 51-60 indicates "moderate symptoms (e.g., flat affect and
 18 circumstantial speech, occasional panic attacks) OR moderate difficulty in social,
 19 occupational, or school functioning (e.g., few friends, conflicts with peers or co-
 20 workers)." See American Psychiatric Association, Diagnostic and Statistical Manual
 21 of Mental Disorders, 32 (4th ed.). The Court finds that the ALJ's observation that
 22 plaintiff's GAF score of 50 was "very close to finding of moderate symptoms" (i.e.,
 23 was very close to a score of 51-60, which indicates "moderate symptoms") was an
 24 accurate statement, not a misrepresentation.

25 Finally, plaintiff claims that, in finding him not disabled, the ALJ improperly
 26 relied on section 204.00 of the Grids instead of consulting a vocational expert, given
 27 the evidence of his non-exertional limitations as reflected in Dr. Goldsmith's opinion.
 28 (See Jt Stip at 8.) As noted, Dr. Goldsmith opined that plaintiff had moderate

1 limitations in various areas of mental functioning. (See AR 219.) However, the
2 Court finds that these limitations did not constitute “a sufficiently severe non-
3 exertional limitation that required the assistance of a vocational expert.” See Hoopai
4 v. Astrue, 499 F.3d 1071, 1076-77 (9th Cir. 2007) (holding that vocational expert’s
5 testimony was not required where plaintiff’s mild or moderate depression resulted in
6 moderate limitations in maintaining attention and concentration for extended periods,
7 maintaining regular work attendance, completing a normal workday or workweek
8 without interruption from psychologically-based symptoms, and performing at a
9 consistent pace).

10 *****

11 IT THEREFORE IS ORDERED that Judgment be entered affirming the
12 decision of the Commissioner and dismissing this action with prejudice.

13
14 DATED: February 13, 2012

A handwritten signature in dark ink, appearing to read "R. N. Block", is written over a light gray rectangular background.

15
16
17 ROBERT N. BLOCK
UNITED STATES MAGISTRATE JUDGE
18
19
20
21
22
23
24
25
26
27
28